

REMARKS

As a preliminary matter, Examiner has objected to the drawings, asserting a clean copy of the drawings should be provided. As discussed above, the drawings are to be replaced by the Replacement Sheets enclosed herewith in Appendix A. Accordingly, Applicant respectfully asserts that the drawings are now in proper form. Therefore, Applicant respectfully requests Examiner withdraw the objection to the drawings.

As another preliminary matter, Examiner has objected to the disclosure, asserting that a marked up copy of the changes made to the specification (assumably in the prior filed response) should be submitted. Applicant has amended the Specification as described above. For sake of clarity, these amendments include all of the amendments made in the prior response, as well as some new amendments. As such, the above amendments to the Specification should be used in lieu of the substitute specification provided in Applicant's April 5, 2010 Amendment. Accordingly, Applicant respectfully asserts that the disclosure is now in proper form. Therefore, Applicant respectfully requests Examiner withdraw the objection to the disclosure.

Examiner has provisionally rejected Claims 23 and 25-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of copending Application Serial No. 10/590,638 ("the '638 Application") and Claims 44 and 52 of copending Application Serial No. 10/587,352 ("the '352 Application"). Examiner has also rejected Claims 23 and 25-30 under 35 U.S.C. § 112, second paragraph, as being indefinite. In addition, Examiner has rejected Claims 23 and 25-30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,145,352 to Vickers et al. ("Vickers"). The Examiner has also rejected Claims 25, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Vickers in view of U.S. Patent No. 5,251,467 to Anderson ("Anderson").

Claims 23 and 26 stand currently amended to replace some of the functional language with structural language. Minor amendments have also been made to Claims 22, 23-25, and 27-42 to improve their form. Claims 22, 24, and 31-42 stand previously withdrawn. Claims 1-21 stand previously canceled. Claims 22-42 are currently pending. The following remarks are considered by applicant to overcome each of the Examiner's

outstanding rejections to current Claims 23 and 25-30. An early Notice of Allowance is therefore requested.

I. THE REJECTIONS UNDER 102(B) AND 103(A) ARE DEFICIENT AS BEING UNDULY CONFUSING

On page 5 of the current Office Action, Examiner rejects Claims 23 and 25-30 under 35 U.S.C. § 102(b) as being anticipated by Vickers. However, Examiner's detailed rejection on page 5 only actually discusses how Claims 23 and 26 are anticipated by Vickers. Claims 25 and 27-30 are not discussed until Examiner's 35 U.S.C. § 103(a) rejection on pages 7-9 of the Office Action.

Further, on page 7 of the Office Action, Examiner admits that Vickers fails to disclose certain elements of Claim 25, 27, and 28. This inherently prevents a 102(b) anticipation rejection of these claims, contradicting Examiner's rejection of Claims 23 and 25-30 on page 5 of the Office Action.

Moreover, Examiner's detailed discussion of the rejection of Claims 29 and 30 appears on page 8 of the Office Action, under Examiner's 103(a) obviousness rejection of Claims 25, 27, and 28. This would seem to indicate Examiner intended to reject Claims 29 and 30 as being obvious, and **not** as being anticipated. However, Claims 29 and 30 directly depend from Claims 23 and 26 respectively (both of which were rejected as being anticipated), and the discussion on page 8 of Claims 29 and 30 only refers to Vickers. This contradicts the placement of the discussion of Claims 29 and 30, and seems to indicate Examiner intended to reject Claims 29 and 30 as being anticipated, and **not** as being obvious. However, Examiner has completely failed to address the "shoulder or hook" requirement of Claims 29 and 30, which calls the entire rejection of Claims 29 and 30 into question.

For all the above reasons, the rejections of the claims under 35 U.S.C. § 102(b) as being anticipated and under 35 U.S.C. § 103(a) as being obvious on pages 5-8 of the Office Action are deficient as being so unduly confusing that they make the record of the current case unclear. Therefore, Applicant respectfully asserts that the anticipation/obviousness rejections **must** either (1) be appropriately corrected to accurately indicate exactly what the rejections are and address **all** of the claim limitations, or (2) be withdrawn completely.

As the Office Action currently stands, **anticipation** rejections of **only** Claims 23 and 26, and **obviousness** rejections of **only** Claims 25 and 27-30 are properly made in the current Office Action. Applicant's discussion below will therefore be made with this understanding.

II. SUMMARY OF RELEVANT LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The determination of obviousness rests on whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. In determining obviousness, four factors should be weighed: (1) the scope and content of the prior art, (2) the differences between the art and the claims at issue, (3) the level of ordinary skill in the art, and (4) whatever objective evidence may be present. Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. The Examiner carries the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness and must show that the references relied on teach or suggest all of the limitations of the claims.

III. PROVISIONAL NONSTATUTORY DOUBLE PATENTING REJECTION OF CLAIMS 23 AND 25-30

On page 2 of the current Office Action, the Examiner provisionally rejects Claims 23 and 25-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of the '638 Application and Claims 44 and 52 of the '352 Application. These rejections are respectfully traversed and believed overcome in view of the following discussion.

As an initial matter, Applicant notes that the current double patenting rejection has been made as a **single** rejection over two references, and **not as two separate** rejections over two references. As such, Applicant only needs to remove one of the two cited references in order to overcome the current double patenting rejection.

Second, Applicant respectfully notes that the '352 Application issued as U.S. Patent No. 7,690,083 ("the '083 Patent) on April 6, 2010. Claim 1 of the '083 Patent

corresponds to Claim 44 of the '352 Application, while Claim 52 of the '352 Application is completely absent from the '083 Patent. Accordingly, Applicant respectfully maintains that Examiner **must** revise any future double patenting rejection accordingly (i.e., Claims 44 and 52 of the '352 Application **must** be replaced by Claim 1 of the '083 Patent).

Third, the '638 Application is a national phase application of a PCT application (i.e. PCT/EP05/02083 filed on February 28, 2005). The current Application is also a national phase application of a PCT application (i.e., PCT/EP05/00728 filed on January 26, 2005). Thus, the effective filing date of the current Application (i.e., January 26, 2005) **predates** the effective filing date of the '638 Application (i.e., February 28, 2005). As such, the '638 Application **cannot** be used in a double patenting rejection of the current Application.

Since, the '638 Application **cannot** be used in a double patenting rejection of the current Application, and the current double patenting rejection has been made as a **single** rejection over two references, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of nonstatutory double patenting of Claims 23 and 25-30. Therefore, Applicant respectfully requests Examiner withdraw the rejection of Claims 23 and 25-30 on the ground of nonstatutory double patenting over Claims 28, 29, and 31-34 of copending Application Serial No. 10/590,638 and Claim 1 of U.S. Patent No. 7,690,083 (corresponding to Claim 44 Application Serial No. 10/587,352).

IV. REJECTION OF CLAIMS 23 AND 25-30 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

On page 4 of the current Office Action, the Examiner rejects Claims 23 and 25-30 under 35 U.S.C. § 112, second paragraph, as being indefinite. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Examiner states that it is unclear in Claim 25 how the holding elements are resilient but also made of a rigid material. This misinterprets the claim language. More specifically, Claim 23 states that the holding elements "are resilient in direction of the body part's outer surface against spring force". It is clear from the Specification and the Drawings (see, e.g., Figs. 1C, 3, 8A, 10B, 14A, 20, etc.) that holding elements with such a resiliency can also be made of a rigid material, such as metal.

A similar type of resiliency can be said of the latch of a standard door, which is resilient in the direction of the door's outer surface against some type of force, but is still made of a rigid material (e.g., metal).

As such, Claim 25 is definite.

In addition, Examiner states that the cylinder in Claims 23 and 25-30 is unclear, as the cylinder does not appear to be pictured as a cylinder. However, Figs. 1A and 1C, and the dashed lines in Fig. 1B, clearly show how holding elements 36, 136 are slides 56 which are arranged so as to be displaceable parallel to the door leaf plane in a cylinder that is rectangular in cross section, as stated in independent Claims 23 and 26.. Application, ¶ [0118].

As such, independent Claims 23 and 26 are definite, as are Claims 25 and 27-30 which each ultimately depends from one of Claims 23 and 26.

Accordingly, Applicant respectfully asserts that Claims 23 and 25-26 are definite. Therefore, Applicant respectfully request Examiner withdraw the rejection of Claims 23 and 25-30 under 35 U.S.C. § 112, second paragraph, as being indefinite.

V. REJECTION OF CLAIMS 23 AND 26 UNDER 35 U.S.C. § 102(B) BASED ON VICKERS

On pages 5-6 of the current Office Action, the Examiner rejects Claims 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by Vickers. These rejections are respectfully traversed and believed overcome in view of the following discussion.

Amended, independent Claims 23 and 26 both state, in part:

“holding elements which project from the body part and are resilient in direction of the body part's outer surface against spring force, a free end of these holding elements being provided with a **first** inclined surface **configured** to support the body part without play on the rim or edge of the opening of the other, inner side of the thin wall, the free end further comprising a **second** inclined surface **configured** for slam action....” (emphasis added).

A. Prior Arguments

Vickers fails to teach or suggest all of the features of Claims 23. Rather, Vickers merely discloses a holding element that has a surface being inclined for displacing

the holding element to allow same to pass the rim of the opening. In the case of play developing between the inclined surface and the rim, such play is not automatically absorbed. Rather, the inclined surface of Vickers *only* works for slam action

However, Claim 23 recites a second inclined surface configured for a slam action in addition to a first inclined surface 38. (See Figure 1c.) Vickers simply does **not** disclose the first inclined surface 38 configured to support the body part.

In addition, Vickers also differs from the claimed invention because the surface of Vickers's holding element 110 and 150 which Examiner asserts is capable of supporting the body part is **not** inclined after mounting but parallel to the thin wall 250.

B. Examiner's Response

Examiner refused to give the Applicant's above prior arguments any patentable weight, as they were previously directed to functional language (i.e., "for" language). In order to revise Applicant's prior arguments to be applicable to structural claim language (as required by Examiner), Applicant amended Claim 1 to require that the **first** inclined surface of each holding element is "configured to support" (instead of being "for supporting") the body part without play on the rim or edge of the opening. Claim 1 was also amended to require that the **second** inclined surface is "configured" for slam action. As such, Applicant's above arguments are now drawn to (and have been revised to refer to) structural language, and not functional language. Thus, Examiner **must** now give the above arguments patentable weight.

In particular, the slide bars 110, 150 of Vickers (which Examiner asserts disclose the holding elements of Claims 23 and 26) are **not** "configured to support" a body part without play on the rim or edge of an opening. Rather, the slide bars 110, 150 are instead configured to allow latching of the door panel 250 to the frame 252, and have **nothing whatsoever** to do with supporting the latch body 20 on the rim or edge of the panel opening 248. See Vickers, Col. 11, Lns. 16-28 (especially Lns. 23-28). As such, it is impossible for the slide bars 110, 150 of Vickers to disclose the holding elements (which must have the appropriately configured first inclined surfaces) of Claims 32 and 36.

In addition, it is the mounting clips 230 which are actually configured to support the latch body 20 on the rim or edge of the panel opening 248 (assumably with assistance of the screws 240). See Vickers, Col. 10, Ln. 65 – Col. 11, Ln. 15; Figs. 1 and 4.

However, the mounting clips 230 don't even remotely disclose the holding elements of Claims 32 and 36, which "project from the body part and are resilient in direction of the body part's outer surface against spring force". As such, it is also impossible for the mounting clips 230 of Vickers to disclose the holding elements of Claims 32 and 36.

C. Conclusion

Accordingly, since Vickers fails to disclose any elements that are configured like the holding elements of Claims 32 and 36, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of anticipation of independent Claims 23 and 26. Therefore, Applicant respectfully requests that Examiner remove the rejection of Claims 23 and 26 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,145,352 to Vickers et al.

VI. REJECTION OF CLAIMS 25 AND 27-30 UNDER 35 U.S.C. § 103(A) BASED ON VICKERS IN VIEW OF ANDERSON

On pages 7-8 of the current Office Action, the Examiner rejects Claims 25 and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over Vickers in view of Anderson. These rejections are respectfully traversed and believed overcome in view of the following discussion.

A. Claim 25

Claim 25 is ultimately dependent from independent Claim 23. As Claim 23 is allowable, so must be Claim 25.

In addition, Claim 25 states, in part:

"wherein, when the two diametrically oppositely arranged holding elements are loaded to different extents, the holding element upon which the **smaller load** is exerted is made of **flexible plastic** and the other holding element, upon which the **greater load** is exerted, is made of **rigid material**." (emphasis added).

Examiner maintains that Vickers fails to disclose the material of the holding elements. This, however, is patently incorrect.

In particular, Vickers **specifically** states:

The slam latch 10 is secured by a pair of mounting clips 230 (FIG. 1) affixed with screws. Except for the spring means 198, the lock cylinder 200 and the screws 240, which are preferably formed from metal, all other parts are preferably formed by molding a thermoplastic polymeric material. In particular, the latch body 20 and handle 70 are preferably formed from blend of polycarbonate and ABS copolymer, so as to provide a smooth, attractive surface texture which simultaneously provides a toughened, stress-resistant part. *The slide bolts 110, 150 are preferably formed from a glass-reinforced nylon to provide a strong part with a low friction coefficient.*

Vickers, Col. 5, Lns. 46-57 (emphasis added).

As such, **neither** of the slide bolts 110, 150 of Vickers is ever disclosed as being a rigid material, such as metal. In fact, Vickers **teaches away from** either of the slide bolts 110, 150 being made from a rigid material such as metal, since Vickers specifically discloses that all other parts (including the slide bolts 110, 150) should **not** be made of metal.

Further, if glass-reinforced nylon used to make the slide bolts 110, 150 could somehow be construed as a “rigid material”, then it could not also be a “flexible plastic” as required by the holding element of Claim 25 with the smaller load.

Thus, regardless of how Vicker’s is interpreted, it is impossible to arrive at the invention of Claim 25, which requires that one molding element be made from a “flexible plastic” while the other holding element be made from a “rigid material”.

Accordingly, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of obviousness of Claim 25. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of Claim 25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,145,352 to Vickers et al., in view of U.S. Patent No. 5,251,467 to Anderson.

B. Claims 27 and 28

Claims 27 and 28 are each ultimately dependent from independent Claim 26. As Claim 26 is allowable, so must be Claims 27 and 28. Accordingly, Applicant respectfully asserts that Examiner has failed to establish a *prima facie* case of obviousness of Claims 27 and 28. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of

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Claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,145,352 to Vickers et al., in view of U.S. Patent No. 5,251,467 to Anderson.

C. Claims 29 and 30

Claims 29 and 30 each ultimately depend from one of independent Claims 23 and 26. As Claims 23 and 26 are allowable, so must be Claims 29 and 30.

In addition, Claims 29 and 30 both state, in part:

“wherein the cylinder has a partial dividing wall or undercut or opening edge at which **slides** are supported axially by a shoulder or hook.”
(emphasis added).

Examiner completely fails to address the above language of Claims 29 and 30. As such, Examiner’s rejection of Claims 29 and 30 is **unsupported** and **must** either (1) be amended to actually support the asserted rejection, **or** (2) be withdrawn completely.

Accordingly, Applicant respectfully asserts that Examiner has failed to establish a prima facie case of obviousness of Claims 25 and 27-30. Therefore, Applicant respectfully requests that Examiner withdraw the rejection of Claims 25 and 27-30 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,145,352 to Vickers et al., in view of U.S. Patent No. 5,251,467 to Anderson.

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Based upon the above remarks, Applicant respectfully requests reconsideration of this application and its early allowance. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite the prosecution of this application, the Examiner is urged to contact him at the number indicated below.

Respectfully submitted,

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Appendix A

Replacement Sheets